

	<a href="#">Link to Final Agency Decision</a>
	11-1800-19325-2

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of Revocation of the Family Child Care License of Audrey Neal	<b>FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS</b>
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Administrative Law Judge Barbara L. Neilson conducted a hearing in this contested case proceeding on February 13, 2008, at the Ramsey County Courthouse and on May 15, 2008, at the Office of Administrative Hearings in St. Paul, Minnesota. The OAH record closed on June 20, 2008, when the last post-hearing brief was received.

David MacMillan, Assistant Ramsey County Attorney, represented the Minnesota Department of Human Services (the Department or DHS) and Ramsey County (the County) at the hearing. Lateesa Ward, Attorney at Law, Ward & Ward, represented the Licensee, Audrey Neal Johnson.

**STATEMENT OF THE ISSUES**

1. Did the Department demonstrate reasonable cause for the revocation of the Licensee's family child care license by showing that a child attending the Licensee's family child care was sexually abused by a member of the Licensee's household and that the Licensee failed to notify the County of a change in household membership and failed to submit background studies for the two new household members and for a substitute provider, and that she thereby failed to comply fully with applicable law or rule?

2. If so, did the Licensee demonstrate by a preponderance of the evidence that she was in full compliance with the laws or rules that the Department alleges were violated?

3. Should the Department's Order of Revocation be affirmed?

The Administrative Law Judge concludes that a daycare child was sexually abused by a member of the Licensee's household and that the Licensee failed to provide the County with timely notification of a change in household membership and background study authorization forms for the two new household members. The Judge concludes that the Licensee did, in fact, notify the County of the identity of a substitute caregiver and submit a background

study authorization form for the substitute, but the form apparently was not received by the County and the County licensing worker did not follow up with the Licensee after failing to receive the form. The Administrative Law Judge recommends that a lesser sanction than revocation be imposed.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

### **Procedural Background**

1. The Licensee, Audrey Neal, is licensed by the Department of Human Services to provide family child care.<sup>1</sup>

2. After consultation with the Department of Human Services and the County Attorney's Office, the County recommended to the Department by letter dated June 21, 2007, that the Licensee's license to provide family child care be revoked. The recommendation was based on the following allegations:

- a. On or about November 29, 2006, while the Licensee was hospitalized and the daycare children were left under the supervision of the Licensee's mother and mother-in-law, a 4-year-old daycare child was inappropriately touched on her private part by the Licensee's nephew (Child No. 3);
- b. Although the sexual abuse was reported to Ramsey County Human Services by the Midwest Children's Resource Center on December 7, 2006, the licensing worker did not become aware of the alleged sexual abuse until March 14, 2007;
- c. Although the Licensee's nephews had moved into her home in July 2006, the Licensee had not reported their presence to the County Child Care Licensing Unit or submitted information for their background studies; and
- d. The Licensee had not submitted information for a background study for a substitute helper.<sup>2</sup>

3. By letter dated June 28, 2007, the County informed the Licensee that it had made a recommendation to the Department to revoke her family child care license "because of a pending state decision."<sup>3</sup>

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<sup>1</sup> Testimony of Licensee, David Johnson; Exhibit 8.

<sup>2</sup> Ex. 1; Test. of Florence Stafford and Peggye Mezile. (Ex. 32 is a duplicate copy of this letter.)

<sup>3</sup> Ex. 2; Test. of F. Stafford.

4. By letter dated October 5, 2007, the Department issued an Order of Revocation of the Licensee's license to provide family child care. As the basis for its Order of Revocation, the Department alleged that, as a result of an investigation by Ramsey County Child Protection and Ramsey County Law Enforcement, it had been determined that a child in the Licensee's care had been sexually abused by a household member; the Licensee failed to notify Ramsey County Licensing of a change to her household membership that occurred when two individuals moved into her home in June 2006; the Licensee failed to submit background studies for these individuals as required; and the Licensee had failed to submit a background study for a substitute caregiver who was caring for the children in her daycare when the sexual abuse occurred. The Department indicated that revocation was necessary in order to protect the health, safety, and rights of children receiving services in the Licensee's program. The letter also informed the Licensee of her right to appeal the Order of Revocation.<sup>4</sup>

5. Florence Stafford, a Licensing Social Worker for Ramsey County Community Human Services, served the Order of Revocation on the Licensee by personal delivery on October 5, 2007.<sup>5</sup>

6. The Licensee filed a timely appeal, and this contested case proceeding followed.

7. A Protective Order was entered in this matter on December 18, 2007.

### **Underlying Facts**

8. The Licensee lives in St. Paul with her husband, Rev. David Johnson, and their five children, and has had a license to operate a family child care in her home since approximately 1999.<sup>6</sup> She currently holds a Class C-2 family child care license.<sup>7</sup> The Licensee's child care home is within the geographic area assigned to County Licensing Worker Florence Stafford.<sup>8</sup>

9. Prior to the matters involved in this proceeding, the County had not issued any corrective orders to the Licensee or received any complaints regarding her daycare.<sup>9</sup> Ms. Stafford found the Licensee to be thorough and conscientious in the past.<sup>10</sup>

10. A Family Day Care Provider Agreement form is typically discussed at the initial licensing interview and is signed only one time by a license holder. The County licensing worker does not send additional copies of that form to license holders as part of the subsequent license renewal process.<sup>11</sup> Paragraph 29 of an

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<sup>4</sup> Ex. 3; Test. of F. Stafford. (Ex. 31 is a duplicate copy of the Order of Revocation.)

<sup>5</sup> Ex. 33 at 1.

<sup>6</sup> Test. of Florence Stafford.

<sup>7</sup> Ex. 1 at 1.

<sup>8</sup> Test. of F. Stafford.

<sup>9</sup> Test. of F. Stafford, Licensee.

<sup>10</sup> Test. of F. Stafford.

<sup>11</sup> Test. of F. Stafford.

undated Family Day Care Provider Agreement signed by the Licensee stated that she understood and agreed to abide by the following:

I agree to notify the agency within 30 days of any change in the regular membership of the household within the day care residence or the addition of an employee who will regularly be providing care. (9502.0375 Subp. 2 A.)<sup>12</sup>

The County's file pertaining to the Licensee contains a similar form that appears to have been signed by Rev. Johnson in 2000.<sup>13</sup>

11. The County conducts background checks with respect to members of a child care licensee's household who are 13 or older and individuals who work in the day care. Once a licensee notifies the County of a change in his or her household, the County licensing worker sends a Bureau of Criminal Apprehension (BCA) form to the home, and the provider or subject completes the form and provides permission to conduct the background check. Thereafter, a criminal background check is conducted with respect to the individual, as well as a social service check (i.e., an inquiry into contacts with child protection or social services) to discover any social service or juvenile issues. If the individual has lived outside Minnesota, an interstate check is conducted. The County does not typically contact relatives of the subjects as part of the background check.<sup>14</sup>

12. After the first year of licensure, family child care license holders usually must complete license renewal applications approximately every two years. The County typically sends child care licensees a renewal packet approximately 3-4 months prior to the relicensing visit. Child care licensees complete and return the information, which includes a list of household members. As part of this process, license holders are asked to disclose the names and ages of all household members; the identities of alternate and emergency day care providers; and information pertaining to the children in their care. During the relicensing process, new background checks are conducted with respect to household members who are age 13 or older and individuals who work in the day care; the County licensing worker inspects the day care facility; and the licensing worker and licensees discuss the child care licensing checklist.<sup>15</sup>

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<sup>12</sup> Ex. 7; Test. of F. Stafford.

<sup>13</sup> Ex. 7.

<sup>14</sup> Test. of F. Stafford, Peggye Mezile; see Minn. Stat. § 245C.08, subd. 2 (for background studies conducted by a county agency for family child care services, the review includes information from the county agency's record of substantiated maltreatment of adults and maltreatment of minors, information from the juvenile courts, and information from the BCA. If the individual has resided in the county for less than five years, the study includes the above information for the previous counties of residence during the past five years).

<sup>15</sup> *Id.*

13. The Licensee's renewal applications were approved on each occasion.<sup>16</sup>

14. In October of 2003, in connection with the renewal of the Licensee's license, the Licensee and Rev. Johnson as co-applicant submitted a Ramsey County Family Day Care Application. The application form asked that the applicant list "all children as well as other adults living or working in the day care residence." In response, the Licensee identified three sons, two daughters, and her mother, Fannie Faye Holyfield.<sup>17</sup> In connection with the 2003 renewal application, the Licensee, Rev. Johnson, two of their children aged 14 and 16, and Ms. Holyfield submitted background check information and received clearance.<sup>18</sup> Rev. Johnson was not in fact placed on the day care license as a co-applicant, but did serve as a helper in the day care home.<sup>19</sup>

15. In November of 2005, the Licensee submitted another Ramsey County Family Day Care License Application in connection with her license renewal. Rev. Johnson was not identified as a co-applicant on this form. This revised version of the application form asked that the applicant list "**all children and all adults living or working in the childcare residence 30 or more days per year.**"<sup>20</sup> In response, the Licensee identified her husband, three sons, and two daughters. The Licensee did not include Ms. Holyfield or Ms. Mukes in this list because she did not use them for substitute day care more than 30 days per year.<sup>21</sup> Background studies were conducted with respect to the Licensee, Rev. Johnson, and three of their children, and all of these individuals received clearances.<sup>22</sup>

16. The Licensee also submitted a Family Child Care Licensing Checklist in connection with her 2005 renewal application. The Licensee indicated that she used a substitute when she had an emergency. Ms. Stafford conducted a relicensing visit to the Licensee's home on November 9, 2005. During the visit, Ms. Staff made notations in the right-hand column of the Checklist indicating that Ms. Stafford was going to "send out BCA [Bureau of Criminal Apprehension background check permission forms] for 2 new workers." Ms. Stafford later sent the BCA forms to the Licensee. Although the Licensee filled out a form for a background check on Ms. Holyfield and returned the form to Ms. Stafford, Ms. Stafford never received the completed form back from the Licensee. Ms. Stafford did not contact the Licensee when she failed to receive the form. Ms. Stafford approved the renewal of the Licensee's family child care license effective January 1, 2006, to January 1, 2008.<sup>23</sup>

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<sup>16</sup> Test. of F. Stafford, Licensee.

<sup>17</sup> Ex. 8; Test. of F. Stafford.

<sup>18</sup> Exs. 9-13.

<sup>19</sup> Test. of Stafford.

<sup>20</sup> Emphasis added.

<sup>21</sup> Ex. 14; Test. of Licensee, S. Mukes. (Ex. 29 includes a duplicate copy of Ex. 14.)

<sup>22</sup> Exs. 14, 30.

<sup>23</sup> Exs. 15, 33 at 5; Test. of Licensee, F. Stafford. (Ex. 29 includes a duplicate copy of Ex. 15.)

17. Ms. Holyfield was present in the Licensee's home during some of Ms. Stafford's visits. Ms. Stafford knew that the Licensee was using Ms. Holyfield as a substitute in 2003. Ms. Stafford also knew that Ms. Holyfield was helping the Licensee in 2004 and 2005, and was aware that the Licensee wanted to use Ms. Holyfield and her mother-in-law, Shirley Mukes, as substitutes or helpers during 2006-07.<sup>24</sup>

18. When Ms. Mukes is present in the day care home, she primarily fixes meals on the upper level of the home and does not interact with the day care children, who use the lower level of the home. She only helps out a couple of times a year and has not worked at the Licensee's home 30 times in one year.<sup>25</sup>

19. Child No. 3 and Child No. 4 are nephews of the Licensee and Rev. Johnson. Rev. Johnson has known them since birth and has visited them every two or three years. Prior to the summer of 2006, the boys lived in Kentucky. In April of 2006, their mother (David Johnson's sister) died. In approximately July of 2006, Child No. 3 and Child No. 4, who were 14 and 16 years old at that time, came back to Minnesota with the Licensee and Rev. Johnson. At first, they were coming merely to visit. However, prior to the start of the 2006-2007 school year in September, it was decided that they would live with the Licensee and Rev. Johnson. The boys were enrolled in school in St. Paul.<sup>26</sup>

20. The Licensee and Rev. Johnson wanted to give Child No. 3 and Child No. 4 new direction and opportunities, and provide a positive influence in their lives. Prior to making the decision to allow the boys to live with them, the Licensee and Rev. Johnson spoke with various family members about the boys and asked about their behavior and any known problems. Neither boy had a criminal record. Their grandmother said the boys were both "pretty decent." She and other family members told the Licensee and Rev. Johnson that the nephews "lied a lot," had "sticky fingers," and would take things from relatives that didn't belong to them, such as movies and games belonging to their cousins, but did not have any other significant issues. Rev. Johnson concluded that they were "normal" teenagers. Neither the Licensee nor Rev. Johnson had any information about either of the boys that caused them to be concerned that they might commit a sexual offense or pose any danger to others.<sup>27</sup>

21. The Licensee did not inform the County Child Care Licensing Unit that Child No. 3 and Child No. 4 were living in the home or submit information for background studies for them within 30 days of their moving into the home, as required by relevant licensing rules. The failure of the Licensee to report the

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<sup>24</sup> Test. of F. Stafford; Exs. 15 at 6 and 33 at 3 and 5.

<sup>25</sup> Test. of S. Mukes.

<sup>26</sup> Ex. 16 at 2, 6, and 10; Test. of Licensee, D. Johnson.

<sup>27</sup> Test. of D. Johnson, Licensee.

presence of Child No. 3 and Child No. 4 was an error or oversight on her part, and was not an attempt to conceal their presence in her home.<sup>28</sup>

22. Pursuant to the Licensee's practices, Child No. 3, Child No. 4, and the Licensee's older children were not supposed to come downstairs during day care hours unless the Licensee was present.<sup>29</sup>

23. On Wednesday and Thursday, November 29 and 30, 2006, the Licensee was in the hospital. During that time, the day care children were watched by Ms. Holyfield (the Licensee's mother) and Shirley Mukes (the Licensee's mother-in-law).<sup>30</sup>

24. On November 29 or 30, 2006, Child No. 3, who had recently turned 15, came home at a time he was supposed to be in school or attending an after-school program. He sneaked into the house undetected while Ms. Holyfield was in the bathroom on the upper level and Ms. Mukes was in the kitchen, and went downstairs to where the day care children were napping. Child No. 3 later sneaked back outside unnoticed and came into the house again as though he were just arriving for the first time.<sup>31</sup> A 4-year-old child who attended the Licensee's day care (hereinafter referred to as "Child No. 1") later told her father that Child No. 3 had "put his private part on mine" during naptime at day care.<sup>32</sup>

25. On approximately Wednesday, December 6, 2006, the parents of Child No. 1 told the Licensee and Rev. Johnson what Child No. 1 had said about Child No. 3. Thereafter, they left the Licensee's home and took Child No. 1 to the emergency room at Children's Hospital.<sup>33</sup> An emergency room physician referred the child to the Midwest Children's Resource Center (MCRC) for evaluation of concerns related to possible sexual abuse. MCRC staff took a history from the parents and conducted an interview with Child No. 1 as well as a physical evaluation on December 6, 2006. According to the report issued by the MCRC, Child No. 1 in essence said that "a big kid at day care" had pulled her pants down, placed his penis by her vaginal area, and rubbed his penis on the outside part of her body. The St. Paul Police Department was notified and a police officer took a police report from the Child's parents at MCRC during the early afternoon of December 6, 2006. The MCRC nurse informed the police officer that the exam results were normal and there was no sign of penetration.<sup>34</sup>

26. Child No. 1 did not return to the Licensee's day care after December 6, 2006.<sup>35</sup>

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<sup>28</sup> Test. of Licensee.

<sup>29</sup> Test. of Licensee.

<sup>30</sup> Exs. 4, 16 at 2, 5, 26; Test. of Licensee, S. Mukes.

<sup>31</sup> Test. of Licensee, David Johnson, S. Mukes.

<sup>32</sup> Exs. 4, 5, 36.

<sup>33</sup> Test. of Licensee; Ex. 16.

<sup>34</sup> Exs. 4, 5.

<sup>35</sup> Test. of Licensee; Ex. 16 at 2.

27. The Licensee, in the presence of Rev. Johnson, called Ms. Stafford the same day she learned of the incident from the parents of Child No. 1 and left a message for her about the accusation made by Child No. 1.<sup>36</sup> Ms. Stafford called the Licensee back the next day. The Licensee told Ms. Stafford that she had been in the hospital on the day in question and her mother had tended to the day care children. She also informed Ms. Stafford at that time that Child No. 3 and Child No. 4 were living in her home. Ms. Stafford told the Licensee that she didn't have anything on her desk yet about the incident and advised her not to worry. She asked about the Licensee's hospitalization and told the Licensee to take care of herself.<sup>37</sup> The MCRC reported the incident to Ramsey County child protection intake on or about December 7, 2006.<sup>38</sup>

28. On December 19, 2006, a police officer interviewed Child No. 3 regarding the incident. Lynette Elleson (a Ramsey County Child Protection worker) and Rev. Johnson were present during the interview. During the interview, Child No. 3 stated that he had been living with the Licensee and Rev. Johnson for approximately six months. He denied that he had pulled Child No. 1's pants down or ever touched her other than to give her a hug. According to Ms. Elleson's narrative, Child No. 3 suggested that Child No. 1 may have been mad at him because he had taken a toy away from her and put her in time-out. When Child No. 3 was asked if he had ever been accused of something like this before, he said that, while he was living in Kentucky, a cousin who was about 6 years old accused him of touching her. He said that his cousin may have been mad because he had spanked her on the bare butt. Child No. 3 denied touching the girl's private area and indicated that he did not think the incident was ever reported to anyone (i.e., child protection or the police). He also said that the police had never talked to him about that incident.<sup>39</sup> The police officer confirmed that Child No. 3 did not have a police record.<sup>40</sup>

29. After the police interview, Ms. Elleson talked with the Licensee and told her that Child No. 3 could not have any contact with anyone in the day care. The Licensee agreed and they set up a safety plan.<sup>41</sup> Child No. 3 was no longer permitted to come into the home at all during day care hours. In addition, after Child No. 3 had surgery in January 2007, he had to use a wheelchair and was confined to the main level of the Licensee's home.<sup>42</sup>

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<sup>36</sup> Test. of Licensee, Rev. Johnson.

<sup>37</sup> Test. of Licensee.

<sup>38</sup> Child Protection Intake Assessment Narrative (attached to Ex. 1); Ex. 4; Ex. 16 at 2-3; Ex. 36.

<sup>39</sup> Child Protection Intake Assessment Narrative (attached to Ex. 1) at 2; Exs. 5, 16 at 2-3; Test. of L. Elleson.

<sup>40</sup> Test. of L. Elleson.

<sup>41</sup> Test. of L. Elleson; Child Protection Intake Assessment Narrative (attached to Ex. 1) at 2; Ex. 16 at 4.

<sup>42</sup> Test. of Licensee.



30. After learning of the allegation made by Child No. 1, Rev. Johnson spoke with Child No. 3. Child No. 3 continued to deny that he had engaged in the conduct alleged by Child No. 1.<sup>43</sup>

31. On December 21, 2006, Ms. Elleson contacted Child Protective Services in Owensboro, Kentucky, to see if there was any information relating to Child No. 3 being involved in sexual assault or activity. She learned that Child No. 3 had a previous history with child protection in Kentucky but nothing regarding sexual abuse. The child protection history included a 1997 report that Child No. 3's father grabbed him by the arm and slung him to the floor, a 2001 report that his mother had seizure activity and was unable to supervise him, and a 2004 report that he was choked.<sup>44</sup> There was no evidence that Child No. 3 or Child No. 4 had ever been accused of abusing others.<sup>45</sup>

32. Peggye Mezile, the supervisor of child care licensing in the County, first learned of the incident involving the Licensee's day care in January 2007.<sup>46</sup>

33. On February 12, 2007, Ms. Elleson met with the Licensee. The Licensee signed the data privacy and safety assessment forms. The Licensee said that she had difficulty imagining that Child No. 3, who weighs 350 pounds and has knee problems, could get on Child No. 1 and not hurt her. She told Ms. Elleson that Child No. 3 had continued to deny that he had done anything to Child No. 1. She indicated that Child No. 3's only contact with the day care children had been to read with them, but said that there was always a supervising adult present. The Licensee stated that her licensing worker was Florence Stafford and indicated that she had spoken with Ms. Stafford and Ms. Stafford was aware of the investigation.<sup>47</sup> Ms. Stafford later told Ms. Elleson that she "did not recall" such a discussion. This was Ms. Elleson's first maltreatment investigation involving a licensed day care facility. She assumed that the County licensing worker automatically received notice once a report of maltreatment was sent to the Department of Human Services.<sup>48</sup>

34. On March 14, 2007, Ms. Elleson contacted Ms. Stafford and told her that she was investigating an allegation of sexual abuse by the Licensee's nephew. When Ms. Elleson asked Ms. Stafford whether she had spoken to the Licensee about the allegation as the Licensee had indicated, Ms. Stafford said that she "could not recall that." Ms. Stafford informed Ms. Elleson that she had not been notified when Child No. 3 and Child No. 4 moved into the household and had not visited the home since her relicensing visit in November 2005.<sup>49</sup> Ms.

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<sup>43</sup> Test. of D. Johnson.

<sup>44</sup> Test. of L. Elleson; Exs. 5, 16 at 3; see also Ex. 16 at 23.

<sup>45</sup> Test. of L. Elleson.

<sup>46</sup> Test. of P. Mezile.

<sup>47</sup> Ex. 16 at 5.

<sup>48</sup> Test. of L. Elleson.

<sup>49</sup> Ex. 16 at 6; see also Ex. 33 at 10, 14 and Ex. 34 at 4.

Stafford asked Ms. Elleson to send her the MCRC report, her case notes, police reports, and other information relating to the allegations of sexual abuse.<sup>50</sup>

35. During a discussion on March 25, 2007, Child No. 3 admitted to the Licensee and Rev. Johnson that he had touched Child No. 1. The Licensee contacted police, and Child No. 3 was removed from their home on March 28, 2007. Child No. 4 also was removed from the Licensee's home the same day in connection with a separate matter involving alleged contact with a different child (Child No. 2) in a non-day-care setting. The Licensee and Rev. Johnson have informed authorities that Child No. 3 and Child No. 4 will not be returning to their home in the future.<sup>51</sup>

36. The grandmother and legal custodian of Child No. 3 and Child No. 4 contacted Ms. Elleson on March 26, 2007. She indicated that she had given the Licensee and Rev. Johnson temporary legal custody so that the boys could live with them for the school year. She noted that the Johnson family was involved in many activities and she believed that Rev. Johnson would be a good role model for the boys. She told Ms. Elleson that Child No. 3's father had been diagnosed as a paranoid schizophrenic and had a tendency to molest children, and Child No. 3 had told her that his father had molested him.<sup>52</sup>

37. On April 3, 2007, Ms. Elleson determined that maltreatment (sexual abuse) of Child No. 1 by Child No. 3 had occurred, but that child protection services were not needed because Child No. 3 would not be remaining in the Johnson home. She found that neither the facility nor facility staff was responsible, and recommended that no action be taken against the Licensee's child care license based on the maltreatment determination.<sup>53</sup> Ms. Elleson is not familiar with child care licensing rules but believed that the Licensee was a good day care provider and that her facility was safe for children.<sup>54</sup>

38. On June 12, 2007, Ms. Stafford engaged in discussions with DHS and with the County Attorney's Office regarding this matter. DHS recommended that Ms. Stafford check to see if the boys were out of the Licensee's home and, if so, submit a recommendation for revocation based on failure to report change in household; failure to submit background studies for the two nephews and the grandmother substitutes; failure of the grandmothers to complete training regarding sudden infant death syndrome, shaken baby syndrome, first aid, and CPR; and failure to report maltreatment in September [sic] which resulted in a maltreatment finding.<sup>55</sup>

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<sup>50</sup> Test. of F. Stafford.

<sup>51</sup> Exs. 1 at 3; Ex. 16 at 8-9, 11-13, 17, 23; Ex. 27; Test. of F. Stafford, L. Elleson.

<sup>52</sup> Ex. 16 at 10.

<sup>53</sup> Child Protection Intake Assessment Narrative at 1 (attached to Ex. 1); Ex. 36; Test. of L. Elleson.

<sup>54</sup> Test. of L. Elleson; Ex. 36 at 2.

<sup>55</sup> Ex. 33 at 1-2, 13-14; see also Ex. 34 at 4.

39. On June 13 or 14, 2007, Ms. Stafford visited the Licensee's home to verify that Child No. 3 and Child No. 4 were not living in the household. The Licensee told Ms. Stafford that they had been out of the home since the reported sexual abuse case, and Ms. Stafford did not see signs of the boys continuing to live in the home.<sup>56</sup> Ms. Stafford told the Licensee that the County was going to recommend revocation due to the failure to seek background checks on the nephews and the Licensee's mother. The Licensee told Ms. Stafford that she was not aware that her mother's background check authorization form had not been received by the County. Ms. Stafford said that she did not know what could have happened to the form.<sup>57</sup>

40. On June 21, 2007, as noted in Finding 2 above, Ms. Stafford sent a letter to the DHS recommending that the Licensee's license be revoked.

41. On August 22, 2007, Ms. Elleson met with the Licensee's mother and mother-in-law. They told her that, on the day the incident occurred, approximately four day care children were in care. After they served lunch to the children and put them down for a nap, the Licensee's mother went upstairs to use the bathroom. After she left the bathroom, she saw Child No. 3 come in the door from outside and asked what he was doing there. He said that he had not stayed after school that day, and went into the kitchen and to his room. Child No. 1 did not report anything to them about the incident and seemed normal after nap that day. Later, Ms. Elleson talked to the Licensee, who asked what she thought would happen to her day care license. Ms. Elleson told the Licensee that she did not know and thought the State made that decision. Ms. Elleson's notes indicate that she told the Licensee that she "would not recommend that her license be pulled and that it would be a real disservice [sic] if that did occur."<sup>58</sup>

42. As noted in Finding 4 above, the DHS issued an Order of Revocation with respect to the Licensee's family child care license on October 5, 2007.

43. Numerous parents and relatives of children who have attended the Licensee's day care submitted letters and/or testified in support of the Licensee and urged that her license not be revoked. They praised the quality of the care provided by the Licensee and said that the Licensee provides an educational, caring, and faith-based environment for the children in her care as well as a valuable service in her community. They noted that the Licensee's day care facility is clean, neat, and safe. They stated that the Licensee truly loves the children in her care and provides them with a safe and structured environment, and said that the day care children love the Licensee and look forward to attending the day care every day. Several of them noted that the Licensee

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<sup>56</sup> Ex. 1 at 4; Ex. 33 at 2 and 11; Ex. 34 at 5 and 10-11; Test. of Stafford, Licensee.

<sup>57</sup> Test. of Licensee.

<sup>58</sup> Ex. 16 at 26.

provides the children with a level of care that many of them don't receive at home.<sup>59</sup>

44. Other individuals who know the Licensee and Rev. Johnson also testified and/or submitted letters on their behalf. They spoke highly of their integrity, moral standards, contributions to their church and the community, and dedication to children, and noted that they are role models for both children and parents. They also stated that the loss of the Licensee's day care licensure would adversely affect the children and parents who have used the Licensee's day care but also the community as a whole.<sup>60</sup>

45. Ms. Stafford did not request and never received BCA forms from the Licensee concerning Child No. 3 and Child No. 4. She has never conducted a criminal background check regarding the boys.<sup>61</sup>

46. Child No. 4 began working in a YMCA day care center in December 2006 or January 2007, after submitting to a background study and receiving clearance to work there.<sup>62</sup>

47. The Licensee has continued to operate her day care during the pendency of her appeal of the proposed revocation, and the County has not monitored her day care home during that time.<sup>63</sup>

48. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

49. To the extent that the Memorandum that follows explains the reasons for these Findings of Fact and contains additional findings of fact, including findings on credibility, the Administrative Law Judge incorporates them into these Findings.

50. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

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<sup>59</sup> Test. of Roberta Barnes, Ashleigh Hampton, Rickey Neal; Ex. 26 (Letters from Sandra Drummer-Jackson, Ebony Wiley, Juanita Hoskins, Tenniece Nesbit, Marie Bishop, Alison Brisbin, Tonia LaGrone, Patrick Burrage, Dr. Stephanie Burrage, Nick Davis, Kiki Carter, Roberta Barnes; see also Ex. 28 (two favorable parent evaluations).

<sup>60</sup> Test. of Yvonne Harrington, S. Mukes; Ex. 26 (Letters from Rev. W.R. "Smokie" Norful, Jr., Rev. Fredrick Bacon, Melvin Carter, Jr., Charles and Selottie Thames, Carolyn Collins, Norman and Rhonda Harrington, Dr. John Thein, Norman and Yvonne Harrington, Richard Rolle, Sr., Rev. Steve Daniels, Jr., and Clarence Kenon).

<sup>61</sup> Test. of F. Stafford.

<sup>62</sup> Test. of Rev. Johnson, Licensee.

<sup>63</sup> Test. of P. Mezile.

## CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Department gave the Licensee proper and timely notice of the hearing, and it has also fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. At all times relevant to these proceedings, the Licensee was licensed to provide family child care pursuant to Minn. R. 9502.0367.

4. At a hearing regarding revocation of a family child care license, the Department may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the Department demonstrates that reasonable cause existed, the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules at the relevant time.<sup>64</sup>

5. Before the Commissioner revokes a license, the Commissioner must perform an evaluation which considers “facts, conditions, or circumstances concerning the program’s operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the . . . license holder” and “determine whether a risk of harm to the persons served by the program exists.”<sup>65</sup>

6. The Commissioner is authorized by state law to suspend or revoke a license or impose a fine if the license holder “fails to comply fully with applicable laws or rules . . . .”<sup>66</sup> When imposing sanctions on a license holder, the Commissioner of Human Services is required to “consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.”<sup>67</sup>

7. The rules adopted by the Department governing child care licensees require that “[a]ll caregivers shall report any suspected physical abuse, sexual abuse, or neglect of a child to the agency or police.” In addition, providers are required to “inform the agency . . . within 30 days of any change in the regular membership of the household within the day care residence or the

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<sup>64</sup> Minn. Stat. § 245A.08, subd. 3(a).

<sup>65</sup> Minn. Stat. § 245A.04, subd. 6.

<sup>66</sup> Minn. Stat. § 245A.07, subd. 3.

<sup>67</sup> Minn. Stat. § 245A.07, subd. 1.

addition of an employee who will regularly be providing care [and] immediately of any suspected case of physical or sexual abuse or neglect . . . .”<sup>68</sup>

8. The Department is required to conduct a background study of “an individual age 13 and over living in the household where the licensed program will be provided” and “current or prospective employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program . . . .”<sup>69</sup>

9. The Department demonstrated reasonable cause to believe that the Licensee failed to notify the County Licensing Unit of a change in household membership within thirty days and failed to submit background study authorizations for the two new household members, and the Licensee did not demonstrate by a preponderance of the evidence that she was in full compliance with the pertinent laws and rules at the relevant time.

10. The Department also demonstrated reasonable cause to believe that the Licensee failed to submit a background study authorization for a substitute caregiver. However, the Licensee demonstrated by a preponderance of the evidence that she in fact did disclose the identity of the substitute to the Licensing Worker and also submitted the authorization form for the substitute, and therefore that she acted in full compliance with the pertinent laws and rules at the relevant time.

11. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

12. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

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<sup>68</sup> Minn. R. 9502.0375, subps 1 and 2.

<sup>69</sup> Minn. Stat. §245C.03, subd. 1(a)(2) and (3).

## **RECOMMENDATION**

The Administrative Law Judge RECOMMENDS that:

The Commissioner NOT AFFIRM the Department of Human Services' order of revocation of Audrey Neal's child care license but impose lesser discipline if deemed warranted.

Dated: August 1, 2008

s/Barbara L. Neilson

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Digitally recorded - No Transcript Prepared.

## **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of Cal Ludeman, Commissioner of Human Services, Attention: Virginia Rae Bly, 444 Lafayette Road, St. Paul, MN 55155, telephone: (651) 431-3596 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

## MEMORANDUM

In the Order of Revocation, the Department asserted that revocation of the Licensee's license to provide family child care is appropriate because (1) a child in her care was sexually abused by a member of her household; (2) she failed to submit a background study for a substitute caregiver (her mother); and (3) she failed to report the presence of two new household members (her nephews) within 30 days and failed to submit background studies for them. Each of these allegations is discussed below.

### **Sexual Abuse of Day Care Child**

There is no dispute between the parties that a very unfortunate incident of sexual abuse occurred between the Licensee's 15-year-old nephew (Child No. 3) and a 4-year-old day care child (Child No. 1) in late November 2006. The Licensee was in the hospital at the time of the incident, and her mother was serving as a substitute caregiver. Her mother-in-law was helping with food preparation for the day care children. Child No. 3 sneaked into the Licensee's home on the day in question, at a time he was not supposed to be home. The Licensee's mother was in the bathroom on the upper level of the home at the time, and the Licensee's mother-in-law was otherwise occupied in the kitchen. As described in the Findings above, Child No. 3 went downstairs to the day care area where the children were napping, and rubbed his genitals against those of Child No. 1.

There is no evidence that the incident of sexual abuse occurred in part due to lack of supervision or other fault on the part of the Licensee (who was not in the home at the time), her mother (the substitute caregiver on the day of the incident) or her mother-in-law (who was providing assistance with meal preparation that day). The Licensee's mother was taking a bathroom break during the children's naptime (which, of course, is permissible) and her mother-in-law was in the kitchen. There was no showing that they were not within sight or sound of the day care children, as required by the Department's rules relating to supervision.<sup>70</sup>

Moreover, Child No. 3 sneaked in and out of the house at a time when he was not supposed to be home, and entered the day care even though he was not supposed to do so when no adult was present. There is no evidence that the Licensee or her husband had any reason to suspect that he might do so or to suspect that he had any propensity to engage in inappropriate sexual contact

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<sup>70</sup> Minnesota Rules part 9502.0315, subp. 29, requires that "[c]hildren in care must be supervised by a caregiver" and part 9502.0315, subp. 29a, defines supervision to require that a caregiver be "within sight or hearing of an infant, toddler or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child."



with younger children. His conduct that day simply was not reasonably foreseeable.

Finally, there is no evidence that there is any remaining risk to the day care children in the Licensee's home. Both Child No. 3 and Child No. 4 were removed from the home in March 2007 and the Licensee and her husband will not allow them to return.

Although, as the County's maltreatment investigation found, sexual abuse of Child No. 1 by Child No. 3 did in fact occur, neither the day care facility nor its staff was responsible for that abuse. The child protection worker recommended that no action be taken against the Licensee's child care license based on the maltreatment determination. The evidence presented at the hearing leads the Administrative Law Judge to make a similar recommendation.

### **Background Study for Substitute Caregiver**

It is evident that the Licensee submitted a background study authorization for her mother (Ms. Holyfield) in 2003 for the 2004-2005 licensing period. No record was found relating to Ms. Holyfield, and she received clearance to work in the day care. However, the County demonstrated reasonable cause to believe that the Licensee failed to submit a background study authorization for Ms. Holyfield in 2005 for the 2006-2007 licensing period.<sup>71</sup> Despite the language contained in the 2005 version of the County's Day Care Application Form,<sup>72</sup> the County properly points out that the statute governing background studies contains a broad requirement that the Commissioner conduct background studies on "current or prospective employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program," not just those who will have direct contact 30 or more days per year.<sup>73</sup> The County established reasonable cause to believe that the Licensee violated this requirement by providing evidence that the County's file pertaining to the Licensee did not contain an authorization form regarding Ms. Holyfield or the results of a subsequent background study.

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<sup>71</sup> At the hearing, the Department and County stipulated that this case does not include the issue of whether substitute caregivers received proper training. The Department and County also agreed that they were not alleging that the Licensee improperly failed to report Ms. Holyfield on the license application form if the Licensee did not anticipate using her as a substitute on 30 or more days. Contrary to the Licensee's assertion, the Department did not withdraw its claim that the Licensee failed to provide a background authorization form in 2005 for Ms. Holyfield.

<sup>72</sup> The 2005 Ramsey County Family Day Care License Application form (Ex. 14) directed the applicant to list "all children and all adults living or working in the childcare residence 30 or more days per year" (emphasis in original). The County conceded in its post-hearing brief that the wording of this form suggested that day care substitutes that were to be used less than 30 days per year did not need to be listed on the application form, and the Licensing Worker admitted on cross-examination that there was no violation alleged with respect to the Licensee's failure to report Ms. Holyfield on that form.

<sup>73</sup> Minn. Stat. § 245C.03, subd. 1(a)(3).

The burden then shifted to the Licensee to show by a preponderance of the evidence that she was in full compliance with the applicable rules and laws with respect to Ms. Holyfield. The Administrative Law Judge concludes that the Licensee has met her burden. The evidence presented at the hearing demonstrated that Ms. Stafford, the Licensing Worker, had seen Ms. Holyfield during her visits to the home and was aware that Ms. Holyfield had assisted the Licensee in her day care for several years; the Licensee disclosed her intention to continue to use Ms. Holyfield as a substitute on an emergency basis during her 2005 relicensing visit with Ms. Stafford; and Ms. Stafford's notes during that visit include a reminder to send the Licensee background authorization forms for "2 new workers" (presumably including Ms. Holyfield). Most importantly, the Licensee provided credible testimony that she did, in fact, receive, complete, and return to Ms. Stafford a background check authorization form relating to Ms. Holyfield. Although it appears that the form did not end up in Ms. Stafford's possession and the 2005 background study was never completed, Ms. Stafford never contacted the Licensee to ask about it. The supervisor of child care licensing (Ms. Mezile) testified that it was Ms. Stafford's job to follow up when a form was not received back from a license holder.

In light of all of the circumstances, the Administrative Law Judge concludes that the Licensee demonstrated that she was in full compliance with the requirements of the laws and rules relating to background studies for substitute caregivers.

### **Household Member Disclosure and Background Studies for Nephews**

The Licensee admits that she failed to notify the County licensing unit within 30 days that Child No. 3 and Child No. 4 were living in her household and, as a result, background checks were not commenced with respect to the two boys. As reflected in the Findings above, the nephews came for a visit in July 2006 and it was decided prior to the start of school in September 2006 that they would live with the Licensee's family. However, it was not until early December that the Licensee told the County licensing worker that her nephews were living in the home. The Licensee testified that she simply overlooked the reporting requirement, and believed that it would be sufficient to let the County licensing worker know of their presence at the time of her next relicensing visit.

It is very important that day care providers alert county licensing workers promptly about changes in their household membership so that the County can conduct background checks on individuals who have access to day care children and protect the vulnerable young children who are in care. The 30-day reporting requirement is clearly set forth in the rules governing child care license holders.<sup>74</sup> The reporting requirement was also noted in the Family Day Care Provider Agreement (Ex. 6) signed by the Licensee and her husband. Although that Agreement is typically signed only at the time of initial licensure and there was no

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<sup>74</sup> See Minn. R. 9502.0375, subp. 2(A).

evidence that specific reminders are issued to license holders regarding the requirement, license holders are expected to be familiar with the laws and rules governing family day care. The Licensee's failure to report new household members for several months cannot be excused.

### **Alleged Failure to Report Abuse**

In their post-hearing briefs, the County and Department also argued that the revocation was warranted based upon an allegation that the Licensee failed to immediately report the suspected sexual abuse of Child No. 1 to the County's licensing unit as required under Minn. R. 9502.0375, subps. 1 and 2(B). The County's letter to the DHS recommending revocation dated June 21, 2007, alleged that the County licensing worker did not become aware of the sexual abuse that was alleged to have occurred against Child No. 1 in November 2006 until March 2007.<sup>75</sup> However, the Order of Revocation that was ultimately issued by the Department did not include this allegation as one of the grounds for revocation.<sup>76</sup> Accordingly, this allegation is not properly considered in this proceeding.

Even if it is assumed that this additional allegation should be considered and that the County and Department showed reasonable cause to believe that the Licensee violated the reporting requirement based on Ms. Stafford's testimony and her written notes asserting that she did not learn of the abuse allegation until her March 14, 2007, discussion with Ms. Elleson, the Administrative Law concludes that the Licensee satisfied her burden to demonstrate that she was in full compliance with the portion of the rule requiring reports of suspected abuse. The Licensee gave straightforward, detailed, and credible testimony describing the message she left for Ms. Stafford on the same day she learned of the abuse allegation from the parents of Child No. 1, as well as her conversation with Ms. Stafford when Ms. Stafford called back the following day. The Licensee's husband was present when the Licensee initially left a message for Ms. Stafford and corroborated that portion of her testimony. The Licensee's testimony is also consistent with the statements she made to Ms. Elleson in February 2007 indicating that Ms. Stafford was aware of the abuse investigation. In contrast, Ms. Stafford's testimony at the hearing that she

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<sup>75</sup> Ex. 1 at 3.

<sup>76</sup> Although the Order of Revocation quoted portions of Minn. R. 9502.0375 that include, among other things, the requirement that caregivers immediately report any suspected case of abuse, it did not explicitly allege that the Licensee had failed to do so in this case. See last paragraph of Order of Revocation, Ex. 3 at 2-3 ("Because a child in your care was sexually abused by a member of your household; because you failed to notify Ramsey County of two new household members; because you failed to submit a background study for these individuals and for a substitute caregiver; and, in order to protect the health, safety, and rights of children receiving services in DHS-licensed programs, your license to provide family child care is revoked"). When the Administrative Law Judge set forth her understanding of the issues at the outset of the hearing and mentioned only those alleged in the summary paragraph of the Order of Revocation quoted above, the County and Department did not note any disagreement.

definitely did not learn of the sexual abuse allegation until March 2007 was inconsistent with her statement to Ms. Ellessen in March 2007 that she merely “could not recall” speaking to the Licensee about the abuse allegation. Moreover, Ms. Mezile, the supervisor of the child care licensing unit, testified that she received a report of a problem in the Licensee’s home in approximately January of 2007.

Accordingly, the Administrative Law Judge finds that the Licensee demonstrated compliance with this reporting requirement by a preponderance of the evidence.

### **Licensing Sanction**

Although the Licensee’s violation of the reporting and background check requirements with respect to her nephews cannot be excused, the Administrative Law Judge believes that license revocation would be too harsh of a sanction to impose under the circumstances of this case. As noted in the Conclusions above, the Commissioner is required to consider the nature, chronicity, and severity of the violation and the effect of the violation on the health, safety, or rights of persons served by the program when imposing sanctions on license holders. In addition, before revoking a license, the Commissioner must consider, among other things, the well-being of persons served by the program and available consumer evaluations of the program, and also determine whether a risk of harm to the persons served by the program exists. When these factors are taken into consideration, it does not appear that revocation is warranted.

The Licensee here has no past history of violating the rules and statutes governing child care license holders; in fact, the current case is the first time in approximately nine years of licensure that she has been cited by the County for any licensing violation. In addition, the reporting and background check violations that have found to be established in this case stem solely from a single failure on the Licensee’s part: the fact that she overlooked the requirement that she report within 30 days that her nephews had joined her household. There is absolutely no evidence that the Licensee knew of issues relating to the boys and was attempting to conceal the presence of the boys in her home. She and her husband had no reason to suspect that the boys had anything in their backgrounds that would disqualify them from living in the day care home or otherwise make it inadvisable for them to join the Licensee’s household after the death of their mother. Her failure to report them was simply an oversight on her part. She took responsibility for the error and explained that she believed it would have been sufficient to note their presence in the home at the time of her relicensure.

Moreover, while the reporting and background check requirements serve significant public policies and compliance with those requirements by licensees is certainly important, there is no convincing connection here between the failure to

report and the abuse suffered by Child No. 1. There can be no doubt that the incident was very unfortunate and Child No. 2 was harmed. However, it was not the Licensee's failure to disclose the boys' presence that caused the harm. The language of the governing statute instructing the Commissioner to consider the "effect of the violation on the health, safety, or rights of persons served by the program" suggests that the choice of discipline should reflect the relationship between the injury and the violation. Here, there is no relationship between the violation and the sexual abuse because nothing in the background of Child No. 3 prior to November 2006 showed that he had the propensity to sexually harm a child. Thus, there is no proper basis for a conclusion that the reporting violation in itself had a severe or harmful impact on the children served by the program.

The County licensing unit never conducted a separate background study relating to the Licensee's nephews and asserts that it was deprived of the opportunity to conduct such a study by virtue of its failure to learn of the presence of the boys in the home in a timely fashion. However, there is no reasonable basis to believe that anything would have been revealed during a background check by the County licensing unit that would have disqualified Child No. 3 or Child No. 4 or that would have warned a reasonable person that they may have the propensity to sexually harm a child. The police officer and County child protection worker who investigated the incident involving Child No. 1 made inquiries concerning the police and social service records relating to Child No. 3 in Kentucky, and no criminal record or other incident suggesting a propensity to sexually abuse others was found. In addition, a formal background check was conducted regarding Child No. 4 in late 2006 or early 2007, and the results apparently were satisfactory because Child No. 4 obtained clearance to work in a child care center.

The County contends that the background investigation conducted by the police officer and the child protection worker with respect to Child No. 3 does not amount to the type of background study that the licensing unit would have conducted. There is no clear evidence, however, that a background study conducted by the licensing unit with respect to Child No. 3 would have differed in any significant fashion or that it would have uncovered anything more than the information that was provided to the police officer and the child protection worker. Ms. Stafford and Ms. Mezile both admitted at the hearing that they were not aware of anything in either boy's background that would have disqualified them from having direct contact with day care children. The mere speculation by Ms. Mezile that "there presumably would have been something in the background check" and by Ms. Stafford that there "could have been something" in the boys' background that may have given the licensing unit the sense that it was not a good idea for them to be placed in the home is not sufficient to provide a reasonable basis to believe that the sexual abuse of Child No. 1 would have been avoided if the Licensee had promptly reported the boys' presence in the home and authorized background studies.

Finally, there is no evidence that allowing the Licensee's child care license to stay in place would endanger or threaten the safety of the community. To the contrary, numerous parents and community members testified about the quality of the care provided by the Licensee and the benefit of her day care facility to the larger community. Moreover, the Licensee's nephews were removed from the home more than one year ago and will not be allowed to return.

License revocation is more commonly ordered in situations in which a license holder has committed maltreatment or has engaged in numerous and/or chronic violations of the laws and rules governing child care licensees. None of these situations are present here. The Administrative Law Judge is unaware of any analogous case in which the Department has ordered revocation in a situation where a license holder was unaware of any disqualifying conduct on the part of a new member of the household and committed a single violation of failing to promptly inform the County of that person's presence. In fact, the County child care licensing supervisor acknowledged during the hearing that the County typically issues a correction order when a provider fails to disclose a new household member within 30 days, rather than recommending revocation of the license.

Based upon all of the circumstances, the Administrative Law Judge recommends that the Commissioner impose a lesser sanction in this matter, such as a conditional license.

**B.L.N.**